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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,911	02/10/2004	Dennis R. Morgan	Morgan 13	1216
46303 7590 03/23/2010 RYAN, MASON & LEWIS, LLP 1300 POST ROAD, SUITE 205 FAIRFIELD, CT 06824				
EXAMINER				
CURS, NATHAN M				
ART UNIT		PAPER NUMBER		
2613				
MAIL DATE		DELIVERY MODE		
03/23/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Application No.</b> 10/775,911	<b>Applicant(s)</b> MORGAN, DENNIS R.
<b>Examiner</b> NATHAN M. CURS	<b>Art Unit</b> 2613

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.  
NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: 6, 12  
Claim(s) rejected: 1-5, 7-11 and 13-22  
Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

/NATHAN M CURS/  
Primary Examiner, Art Unit 2613

Continuation of 11, does NOT place the application in condition for allowance because: In the rejections, the rationale for the obviousness of using an LMS algorithm in place of the LS algorithm is based on the two relevant references each disclosing a type of minimization algorithm. The two minimization algorithms would then appear to one of ordinary skill in the art as alternatives with a common algorithmic purpose, and thus subject to obvious substitution and design choice. Applicant argues that it is not already known to make the substitution; however, this does not establish non-obviousness. Applicant also argues that LMS algorithms "would not work" for the adaption of two-port all-pass filters merely because they "do not apply". This "do not apply" assertion only implies some kind of rule-of-thumb or common practice known to Applicant for LMS algorithms, but this is not evidence that the substitution "cannot" be made. Applicant's arguments regarding the Newton algorithm have the same deficiencies. Applicant also argues that MacFarlane does not connect the "need" for compensation of irregularities (including PMD) in the background section of MacFarlane with MacFarlane's filtering. This argument is not persuasive. The background section establishes a need for compensation of irregularities (including PMD) and then MacFarlane discloses a signal processing filter as a solution. Nevertheless, Madsen already provides the PMD compensation teaching, and regardless of MacFarlane's intended use, he is still disclosing another type of minimization algorithm (LMS). Applicant also argues that Eyal's mention of Newton algorithm is in connection with "optimization variables" and in not in connection with the adjustment of filter coefficients. This argument is not persuasive because Eyal's "optimization variables" are for the optimization algorithm of Eyal's PMD compensating filter. Thus the "optimization variables" are effectively filter coefficients, regardless of Eyal's particular lexicon. Applicant also argues that MacFarlane doesn't expressly disclose using LMS algorithm for coefficients of a filter. This argument is not persuasive because regardless of MacFarlane's intended use, Madsen already establishes the relationship between minimization algorithm and filter coefficients; MacFarlane then reveals another type of minimization algorithm (LMS).

Also, it appears the document submitted in the IDS of 5 March 2010 establishes that the subject matter of the claims was "known by others" as of September 2002.